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November 16, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**VIA COURIER**

Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***Ex Parte***
CC Docket No. 01-277

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's rules, this will provide notice that on November 15, 2001, Francis D. R. Coleman, Vice President Regulatory Affairs, Mpower Communications Corp. ("Mpower"), Scott Sarem, Vice President Strategic Relations, Mpower and the undersigned met via teleconference with Kathy Farroba, Jessica Rosenworcel, Aaron Goldberger, Renee Crittendon, Common Carrier Bureau, and Ian Dilner of the Policy and Program Planning Division and Deena Shetler and Marvin Sacks of the Competitive Pricing Division, Common Carrier Bureau concerning issues in the above-captioned proceeding. We presented the views set forth in the attached document which was provided prior to the meeting.

We explained that BellSouth's OSS and hot cut provisioning was inadequate because BellSouth, unlike SBC and Verizon, does not provide a Frame Due Time ("FDT") for "hot cuts" of loops serving a customer from BellSouth to a CLEC. An FDT is a specified time for a "hot cut" with a frame of time before and after the specified time, or stated differently a window of time, in which the ILEC will perform the hot cut. For example, SBC and Verizon commit to perform a "hot cut" at a specified time within a window of 60 or 90 minutes, respectively, before or after the specified time. This permits CLECs to monitor the hot cut and to assure that any outage of the customer's service is minimal and take steps to correct any problem if one occurs. SBC and Verizon impose a charge for use of the OSS to order the "hot cut" but do not impose any special charges for providing an FDT for the cut over.

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In contrast, BellSouth offers two completely unsatisfactory approaches to providing "hot cuts."[1] First, it will commit to providing the cut over at anytime during the working day.[2] This makes it impractical for CLECs to effectively monitor the cut over process to make sure that no extended outage has occurred. In effect, it makes it impossible for a CLEC to process commercial volumes of cut overs because CLECs are unable to continuously monitor many lines throughout the day to assure a smooth process. Choosing this approach prevents a CLEC from effectively marketing its services because it cannot assure the customer a smooth cut over from the ILEC. BellSouth does not charge for this option.

Alternatively, as described by BellSouth,[3] a CLEC may obtain a cut over at a specific time by choosing "coordination" and paying a separate charge for it in addition to the OSS ordering charge.[4] Under this process, the CLEC and ILEC essentially negotiate, either at the time of the order or a day or two prior to the cut over, a specified time for the hot cut. At the appointed time for the hot cut, CLEC and ILEC representatives "coordinate" the cut over via teleconference. This approach is unacceptable because BellSouth, like other BOCs, as part of its obligation under the Act to provide unbundled loops should have in place an OSS ordering and provisioning system and a hot cut process that provides for a cut over within a reasonable window without charge. Mpower currently pays BellSouth approximately $2 million/year in "coordination" charges in order to assure a smooth cut over process. BellSouth's approach effectively extracts millions of dollars a year from CLECs, justified apparently in BellSouth's view merely because it has chosen not to implement adequate OSS and loop provisioning processes. Moreover, requiring CLECs to pay BellSouth reduces any incentive for BellSouth to implement an adequate OSS system or a reasonable hot cut process. Incredibly, there is no indication in BellSouth's application that it intends to ever offer an FDT process comparable to BOCs that have gained Section 271 approval. Therefore, it apparently proposes to continue to charge CLECs millions of dollars a year indefinitely.

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1 Brief in Support of Application By BellSouth for Provision of In-Region, InterLATA Services in Georgia and Louisiana, CC Docket No. 01-277, October 2, 2001, pp. 110-101; Affidavit of W. Keith Milner, paras. 141-144.

2 In contrast, Verizon commits to a window as long as 8 hours only for cut overs of more than 200 lines. *See n.* 5, *infra*.

3 *See* n. 1, *supra*.

4 Milner Affidavit, para. 142.

Mpower cannot stress enough that BellSouth's performance in this area is substandard. As noted, both Verizon and SBC offer an FTD at no separate charge as part of their basic obligation to provide unbundled loops. In this connection, provision of an FDT was a focus of Section 271 deliberations before the state commissions,[5] which then provided a basis of the Commission's approval of the BOCs' "hot cut" performance.[6] Where coordination was required, those ILECs did not at the time of the application to the best of Mpower's knowledge, or now, charge for it. Again, at this point, based on previous state and federal Section 271 proceedings, the only conclusion is that a BOC in order to obtain Section 271 approval must offer an FDT process, or if coordination is required, shall not charge for it. As stated, to do otherwise is merely to require CLECs to subsidize and incent the BOC to maintain substandard performance. As pointed out in Mpower's reply comments in this proceeding, SBC has recently informed the California Public Utilities Commission in connection with that state's Section 271 proceeding, that it is "unfair" for an ILEC to charge for coordination in the absence of an FDT process.[7] In addition, Mpower is very concerned that if the Commission were to lower the bar in this area by granting the instant application, Verizon and SBC could backslide by likewise recasting their hot cut process to require unnecessary "coordination" and charge for it, or decline to provide an FDT process in connection with Section 271 approval in other states

5 *See e.g.*, Application of SBC Communications, Inc. Pursuant to Section 271 of the Communications Act to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, Evaluation of the Public Utility Commission of Texas, April 26, 2000, pp. 20-24; Application of Verizon Pennsylvania, Inc., et al, for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the Commonwealth of Pennsylvania, CC Docket No. 01-138, June 25, 2001, n. 295.

6 *Application of SBC Communications, Inc. Pursuant to Section 271 of the Communications Act to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, CC Docket No. 00-65, 15 FCC Rcd 18354 (2000) para. 259.

7 Mpower Reply Comments, CC Docket No. 01-277, filed November 13, 2001 at 5, citing *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, R.95-04-043/I.95-04-044 (Filed April 26, 1995), Testimony of John Stankey, April 5, 2001, p. 12602.

Accordingly, the Commission should not approve this application unless BellSouth implements an FDT process comparable to that of Verizon and SBC, or provide coordination without charge.

Sincerely,

Patrick J. Donovan

PJD/aeg-391212

Enclosure

cc: Kyle Dixon
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*Ex Parte*
Mpower Communications Corp.
CC Docket No. 01-277
November 15, 2001

## BellSouth's "Frame Due Time" Practice

- Frame Due Time ("FDT") is a hot cut process in which the BOC provides a cut over of the customer's service within a narrow time frame without charge.
  - A narrow time frame permits the CLEC to effectively monitor the cut over to make sure that there is no extended loss of customer service.
  - "The ability of a BOC to provision working, trouble-free loops through hot cuts is critically important in light of the substantial risk that a defective hot cut will result in competing carrier customers experiencing service outages for more than a brief period." *See Texas Order* para. 256.

- BellSouth offers Mpower a choice of either a specific cut over time with coordination with a separate charge for the coordination or a cut over on a certain date with no charge.
  - SBC has stated that it is unfair to charge for coordination when an FDT process is unavailable. *See* April 5, 2001 CPUC testimony of John Stankey.
  - Insofar as the Milner affidavit[1] purports to offer a cutover with coordination without charge, that it not the case with respect to Mpower.

- BellSouth's treatment of Mpower does not meet industry standards.
  - SBC and Verizon (East) offer an FDT without charge within a 2 and 3-hour window, respectively.

- BellSouth is charging Mpower approximately $2 million/year region-wide for cut over with coordination.

- BellSouth's treatment of Mpower in this regard is anti-competitive, constitutes a barrier to entry, and permits BellSouth to profit from its anti-competitive conduct.

- FCC 271 approvals have been premised on the BOC providing a reasonable FDT within a narrow time frame without charge.
  - The FCC should maintain that standard for Georgia and Louisiana.

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[1] Affidavit of W. Keith Milner, CC Docket No. 01-277, paras. 141-144.